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Application Number	10068,909
Filing Date	02/07/2002
First Named Inventor	Jakobus Middeljans
Art Unit	2143
Examiner Name	Kyung H. Shin
Attorney Docket Number	PHNL 010072
Total Number of Pages in This Submission	24

ENCLOSURES (Check all that apply)

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SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	LEIMBACH ASSOCIATES		
Signature			
Printed name	James D. Leimbach		
Date	June 19, 2006	Reg. No.	34,374

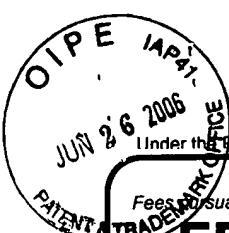
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Effective on 12/08/2004.

Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).

FEE TRANSMITTAL

For FY 2005

☐ Applicant claims small entity status. See 37 CFR 1.27TOTAL AMOUNT OF PAYMENT (\$)
500.00**Complete if Known**

Application Number	10/068,909
Filing Date	02/07/2002
First Named Inventor	Jakobus Middeljans
Examiner Name	Kyung H. Shin
Art Unit	2143
Attorney Docket No.	PHNL 01072

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FEE CALCULATION**1. BASIC FILING, SEARCH, AND EXAMINATION FEES**

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	
Utility	300	150	500	250	200	100	
Design	200	100	100	50	130	65	
Plant	200	100	300	150	160	80	
Reissue	300	150	500	250	600	300	
Provisional	200	100	0	0	0	0	

2. EXCESS CLAIM FEES

Fee Description	Fee (\$)	Small Entity Fee (\$)
Each claim over 20 (including Reissues)	50	25
Each independent claim over 3 (including Reissues)	200	100
Multiple dependent claims	360	180

Total Claims	Extra Claims	Fee (\$)	Fee Paid (\$)	Multiple Dependent Claims
- 20 or HP =	x	=		Fee (\$) Fee Paid (\$)

HP = highest number of total claims paid for, if greater than 20.

Indep. Claims	Extra Claims	Fee (\$)	Fee Paid (\$)
- 3 or HP =	x	=	

HP = highest number of independent claims paid for, if greater than 3.

3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets	Extra Sheets	Number of each additional 50 or fraction thereof	Fee (\$)	Fee Paid (\$)
- 100 =	/ 50 =	(round up to a whole number) x	=	

4. OTHER FEE(S)

Non-English Specification, \$130 fee (no small entity discount)

Other (e.g., late filing surcharge): Fee for Appeal Brief

Fees Paid (\$)

500

SUBMITTED BY

Signature

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Name (Print/Type) James D. Leimbach

Date 06/19/2006

This collection of information is required by 37 CFR 1.136. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND
INTERFERENCES

In re Application of
 Jakobus Middeljans

ARRANGEMENT FOR
 DISTRIBUTING CONTENT
 PROFILING CENTER RECEIVING
 DEVICE AND METHOD

Serial No. 10/068,909

Filed: February 7, 2002

Confirmation No. 9407

Group Art Unit: 2143

Examiner: Kyung H. Shin

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APPEAL BRIEF UNDER 37 C.F.R. § 41.37

06/27/2006 BABRAHA1 00000027 503745 10068905

01 FC:1402 500.00 DA

Serial No. 10/068,909

Real party in interest

The real party of interest is the Assignee who is U. S. Philips Corporation, a corporation existing under the laws of the State of Delaware (hereinafter Appellant).

Related appeals and interferences

There are no related appeals or interferences to the present application that are known to appellants, the appellant's legal representative, or assignee which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

Status of the Claims

Claims 1-14 are drawn to a method and arrangement for distributing content an aggregator arranged for bundling the content according to a segment profile and distributing the content to a receiving device. A copy of appealed claims 1-14 is contained in Appendix III following this brief.

Status of the Amendments After Final

A response was filed subsequent to the final rejection to overcome the Examiner's rejection of claims 1-14 35 U.S.C. §102(e) and 35 U.S.C. §103(a). The Examiner in an Advisory Action dated March 7, 2006 indicated that the rejections of claims 1-14 under 35 U.S.C. §102(e) and 35 U.S.C. §103(a) stand.

Summary of the Claimed Subject Matter

The appealed claims define subject matter for a method and arrangement for distributing content an aggregator arranged for bundling the content according to a segment profile and distributing the content to a receiving device.

Appealed claim 1 defines subject matter illustrated in Figure 2 for an arrangement (100) for distributing content (200), including an aggregator (101) arranged for bundling the content (200) according to a segment profile (209) as discussed in the specification on page 9, lines 16-18. The content (200) is distributed to a receiving device (120) as discussed in the specification on page 9, lines 18-19. The receiving device (120) comprising user profile maintenance means disclosed as profiling module (210) for maintaining a user profile (211) as discussed in the specification on page 9, lines 20-30, and profile transmitting means (212) for transmitting the user profile (211) to a profiling center (220) as discussed in the specification on page 9, line 31-page 10, line 6. The profiling center (220) being arranged for aggregating user profiles (211) received from plural receiving devices (120) into an aggregated profile (221), and for making the aggregated profile (221) available to the aggregator (101) for use as the segment profile (209) as described in the specification on page 10, line 16-page 11, line 5.

Appealed claim 6 defines subject matter for a receiving device (120) for use in the arrangement (100) of appealed claim 1, including user profile maintenance means (210) for maintaining a user profile (211), and profile transmitting means (212) for transmitting the user profile (211) to a profiling center (220) as described in the specification on page 8, line 31-page 9, line 6.

Appealed claim 7 defines subject matter for the receiving device (120) as defined by appealed claim 6, wherein the profile transmitting means (212) are arranged for transmitting only a portion of the user profile (211) which has been modified since a previous transmission of the user profile (211) as described in the specification on page 9, lines 4-6.

Appealed claim 8 defines subject matter for a method of profiling consumer behavior, comprising receiving user profiles (211) from plural receiving devices (120), aggregating said received user profiles (211) into an aggregated profile (221), and making the aggregated profile (221) available to an aggregator (101) for use as a segment profile (209) as described in the specification on page 10, line 16-page 11, line 5.

Grounds of Rejection to be Reviewed on Appeal

The Advisory Action dated March 7, 2006 indicated that the rejections to claim 1-14 stand. Claims 1-14 are the appealed claims. Appealed Claims 1, 3, 6, 7, 8,

11, 13 and 14 as being anticipated under the provisions of 35 U.S.C. §102(e) by U.S. Patent No. 6,839,680 issued to Liu et al. (hereinafter *Liu et al.*). Claims 2 and 12 under the provisions of 35 U.S.C. §103(a) as being unaparentable over *Liu et al.* in view of U.S. Patent No. 6,611,607 issued to Davis et al. (hereinafter *Davis et al.*). Appealed claims 4, 5, 9 and 10 under the provisions of 35 U.S.C. §103(a) as being unaparentable over *Liu et al.* in view of U.S. Patent No. 6,240,185 issued to Van Wie et al. (hereinafter referred to as *Van Wie et al.*).

Argument

I. The rejection of appealed claims 1, 3, 6, 7, 8, 11, 13 and 14 as being anticipated under the provisions of 35 U.S.C. §102(e) by U.S. Patent No. 6,839,680 issued to Liu et al. (hereinafter *Liu et al.*)

A. The rejection under 35 U.S.C. S 102(e)

Appealed claims 1, 3, 6, 7, 8, 11, 13 and 14 as being anticipated under the provisions of 35 U.S.C. §102(e) by U.S. Patent No. 6,839,680 issued to Liu et al. (hereinafter *Liu et al.*) The examiner's position is that *Liu et al.* disclose every element defined by appealed claims 1, 3, 6, 7, 8, 11, 13 and 14.

The MPEP at §2131 states that a "claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The MPEP at §2131 further states regarding anticipation that the "identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

B. The reference

Liu et al. (U.S. Patent No. 6,839,680) relates to internet profiling (see Title) to analyze the interests of visitors to web sites of online networks (see col. 1, lines 6-9). *Liu et al.*

tracks user activity across multiple domains and develops a model that describes the visitors interests over time. The model can be used to market information and products to the user (see col. 2, lines 15-26). *Liu et al.* teach to identify each visitor to a web site with unique identification allowing visitor to be consistently identified during visits to multiple web sites (see col. 2, lines 34-44). *Liu et al.* further teach the aggregation of the activities of visitors according to particular business needs (see col. 4, lines 42-48). *Liu et al.* teach that visitor profile information can be shared through a centralized service wherein members of the service share profile information (see col. 6, lines 11-23). The system of *Liu et al.* envisions an identity firewall that allows authorized personnel to identify web visitors and obtain information such as e-mail address, home address and age (see col. 6, lines 43-50). Unauthorized personnel are outside the identity firewall and no personal data of web visitors is obtainable by unauthorized personnel (see col. 6, lines 51-58).

If a URL visited by a web visitor has already been visited, metadata related to the visitor is fetched from the Metadata cache 716. If the visitor is not known, then a call is made to a central recognition engine 718 that identifies the interests of the visitor by categorizing the web page visited (see col. 18, lines 16-25).

Liu et al. teach a hub 204 as shown in Figure 7e that includes a profile database 720, an aggregator queue 722, a profiler 726 and an aggregation system 724. The hub 204 maintains a database 720 of web profiles (see col. 18, lines 50-55). The system of *Liu et al.* updates profiles according to recent web events or creates profiles if they do not already exist (see col. 18, lines 60-65; and col. 20, lines 54-60). The system of *Liu et al.* tracks web activities from web clients and exchanges web user profile information (see col. 21, lines 16-18). *Liu et al.* teach that owners of a web site can have the system of *Liu et al.* form an aggregated profile and enabling the aggregated profile information to be made available on a web server (see col. 30, lines 39-43 and col. 40, lines 44-60). It should be noted that the aggregation of user profiles within a database taught by *Liu et al.* do not disclose or suggest the aggregated profile being made available to the aggregator for use as a segment profile.

C. The differences between the invention and the reference

Appealed claim 1

Appealed claim1 defines elements that create a feedback loop. In this feedback loop, the aggregator bundles the content according to the segment profile that is used to create a user profile. The segment profile is derived from aggregated user profiles. The appellant, respectfully, points out that in order to anticipate rejected appeal claim 1, a reference (here *Liu et al.*) must disclose a user profile created according to a segment profile, wherein the segment profile is itself an aggregation of user profiles. There is no disclosure or suggestion of this type of arrangement within *Liu et al.* Furthermore, it should be noted that the rejection does not address the subject matter for the aggregator (101) arranged for bundling the content (200) according to a segment profile (209) that is defined by rejected Claim 1. Therefore, all of the elements are not addressed by the rejection.

The rejection itself states that *Liu et al.* teach the receiving device comprising user profile maintenance means for generating and maintaining a user profile at col. 6, lines 11-17; col. 24, lines 38-40; and col. 41, lines 4-10. The appellant, respectfully, points out that *Liu et al.* teach at col. 6, lines 11-17 generating visitor profile information; at col. 24, lines 38-40 *Liu et al.* teach a profile service responsible for generating and maintaining user profiles; and at col. 41, lines 4-10 *Liu et al.* teach maintenance of local and global profiles. The rejection further states that *Liu et al.* teach transmitting the user profile to a profiling center with the hub of *Liu et al.* being read as the profiling center. The rejection then asserts that the profiling center within *Liu et al.* is arranged for aggregating user profiles received from plural receiving devices into an aggregated profile (col. 6, lines 19-23; and col. 18, lines 50-53).

The rejection then alleges that the profiling center within *Liu et al.* make the aggregated profile available to the aggregator for use as the segment profile at col. 15, lines 42-48 and col. 18, lines 20-25. The appellant, respectfully, points out that *Liu et al.* at col. 15, lines 42-48 discuss the Global Category Tree Service 504 that maintains and distributes a collection of categories. The Global Category Tree Service 504 (actually 604 in Fig. 6) that is being discussed by *Liu et al.* is not part of the hub but part of the Global Services 112. Furthermore, the Global Category Tree Service 504 “maintains and distributes a standard collection of categories”. It

should be noted that the standard collection of categories available from the Global Category Tree Service 504 are not user profiles but a common framework of categories from which interest information from many different web sites can be measured (see col. 15, lines 46-48).

Liu et al. at col. 18, lines 20-25 discusses processing that occurs within a spoke of *Liu et al.* The appellant, respectfully, asserts that *Liu et al.* does not disclose, or suggest, the hub making the aggregated profile available in the least. More specifically, it is the Web Server (which is clearly not the hub and therefore should not be read as the profiling center defined by the rejected claims) that make the profiles available to the hub. The appellant, respectfully, points out that at this point there is no anticipation because all the elements as defined by the rejected claims are not found. There is no disclosure, or suggestion, within *Liu et al.* for the hub to make available to the Web Server the aggregated profile for use as something that could reasonably be considered as a segment profile. The appellant, respectfully, points out that the rejection does not address how a hub or spoke within *Liu et al.* could possibly make available the aggregated profile available to Web Server for use as the segment profile.

Liu et al. does not disclose or suggest or the elements defined by appealed claim1.

Appealed claim 3

Appealed claim 3 defines the arrangement of appealed claim 1 as discussed above and requires that the profiling center make the aggregated profile available to the aggregator for use as the segment profile. Appealed claim 3 further defines subject matter for aggregating user profiles received from plural receiving devices and for making the aggregated profile available to an for use as a segment profile. As previously discussed in the above discussion to the appeal of the rejection of claim 1, there is no disclosure or suggestion within *Liu et al.* for making the aggregated profile available to an for use as a segment profile. Therefore, this rejection is respectfully traversed.

Appealed claim 6

Appealed claim 6 defines the subject matter for a receiving device (120) for use in the arrangement (100) of appealed claim 1, including user profile maintenance means (210) for maintaining a user profile (211), and profile transmitting means (212) for transmitting the user profile (211) to a profiling center (220). There is no disclosure or suggestion within *Liu et al.*

for the subject matter for a receiving device (120) for use in the arrangement (100) of appealed claim 1, including user profile maintenance means (210) for maintaining a user profile (211), and profile transmitting means (212) for transmitting the user profile (211) to a profiling center (220).

Appealed claim 7

Appealed claim 7 defines the subject matter of appealed claim 6 wherein the profile transmitting means (212) are arranged for transmitting only a portion of the user profile (211) which has been modified since a previous transmission of the user profile (211). The rejection alleges that *Liu et al.* at col. 4, lines 27-35 discloses the subject matter for the profile transmitting means being arranged for transmitting only a portion of the user profile which has been modified since a previous transmission of the user profile. The appellant, respectfully, points out that *Liu et al.* at col. 4, lines 27-35 simply states that the system automatically integrates that previous user history with data collected from new visits. There is no disclosure or suggestion within *Liu et al.* for transmitting only a portion of the user profile which has been modified since a previous transmission of the user profile.

Appealed claim 8

Appealed claim 8, as previously discussed with respect to appeal of claim 1, the rejection asserts that the profiling center within *Liu et al.* make the aggregated profile available to the aggregator for use as the segment profile at col. 15, lines 42-48 and col. 18, lines 20-25. As previously discussed with respect to appeal of claim 1, in order for the foregoing assertion to be true, the hub in *Liu et al.* must make an aggregated profile available to something that could reasonably be considered as an aggregator for use as something that could reasonably be considered as a segment profile. The appellant, respectfully, points out that the rejection does not indicate how the hub in *Liu et al.* could possibly makes available an aggregated profile to something that could reasonably be considered as an aggregator for use as something that could reasonably be considered as a segment profile. *Liu et al.* at col. 15, lines 42-48 discuss the global category tree that maintains and distributes a collection of categories. The global category tree 604 in Fig. 6 that is being discussed by *Liu et al.* is not part of the hub. *Liu et al.* at col. 18, lines 20-25 discuss processing that occurs within a spoke of *Liu et al.* The appellant, respectfully,

asserts that *Liu et al.* does not disclose, or suggest, the hub making the aggregated profile available to anything. More specifically, it is the Web Server (which is clearly not the hub and therefore should not be read as the profiling center defined by the rejected claims) that make the profiles available to the hub. The appellant, respectfully, points out that at this point there is no anticipation because all the elements as defined by the rejected claims are not found. There is no disclosure, or suggestion, within *Liu et al.* for the hub 202 to make available to the Web Server 102 the aggregated profile for use as something that could reasonably be considered as a segment profile. The appellant, respectfully, point out that the rejection does not address how a hub or spoke within *Liu et al.* make available the aggregated profile available to Web Server for use as the segment profile.

Appealed claim 11

The rejection to appealed claim 11, alleges that *Liu et al.* at col. 15, lines 42-48; col. 18, lines 20-25 and col. 40, lines 44-60 disclose the subject matter for making the aggregated filed available by distributing content bundled according to the segment profile. The rejection then alleges that the profiling center within *Liu et al.* make the aggregated profile available to the aggregator for use as the segment profile at col. 15, lines 42-48 and col. 18, lines 20-25. The appellant, respectfully, points out that *Liu et al.* at col. 15, lines 42-48 discuss the Global Category Tree Service 504 that maintains and distributes a collection of categories. The Global Category Tree Service 504 (actually 604 in Fig. 6) that is being discussed by *Liu et al.* is not part of the hub but part of the Global Services 112. Furthermore, the Global Category Tree Service 504 “maintains and distributes a standard collection of categories”. It should be noted that the standard collection of categories available from the Global Category Tree Service 504 are not user profiles but a common framework of categories from which interest information from many different web sites can be measured (see col. 15, lines 46-48).

Liu et al. at col. 18, lines 20-25 discusses processing that occurs within a spoke of *Liu et al.* The appellant, respectfully, asserts that *Liu et al.* does not disclose, or suggest, the hub making the aggregated profile available in the least. More specifically, it is the Web Server (which is clearly not the hub and therefore should not be read as the profiling center defined by the rejected claims) that make the profiles available to the hub. The appellant, respectfully, points out that at this point there is no anticipation because all the elements as defined by the

rejected claims are not found. There is no disclosure, or suggestion, within *Liu et al.* for the hub to make available to the Web Server the aggregated profile for use as something that could reasonably be considered as a segment profile. The appellant, respectfully, points out that the rejection does not address how a hub or spoke within *Liu et al.* make available the aggregated profile available to Web Server for use as the segment profile.

Liu et al. at col. 40, lines 44-60 makes no disclosure or suggestion for making the aggregated filed available by distributing content bundled according to the segment profile.

Appealed claim 13

Appealed claim 13 defines subject matter for the method of appealed claim 8 wherein the receiving further comprises maintaining user profiles and transmitting user profiles to a profiling center. There is no disclosure or suggestion within *Liu et al.* for the subject matter for the method of appealed claim 8 wherein the receiving further comprises maintaining user profiles and transmitting user profiles to a profiling center.

Appealed claim 14

Appealed claim 14 defines subject matter for the method of appealed claim 13 wherein making the aggregated profile available further comprises arranging the profiling center for aggregating user profiles received from plural receiving devices into the aggregated profile. There is no disclosure or suggestion within *Liu et al.* for for the method of appealed claim 13 wherein making the aggregated profile available further comprises arranging the profiling center for aggregating user profiles received from plural receiving devices into the aggregated profile.

II. The rejection of appealed claims 2 and 12 under the provisions of 35 U.S.C. §103(a) as being obvious over *Liu et al.* in view of *Davis et al.*

A. The rejection under 35 U.S.C. S 103(a)

Appealed claims 2 and 12 stand rejected under the provisions of 35 U.S.C. §103 (a) as being obvious over *Liu et al.* (U.S. Patent No. 6,839,680) in view of *Davis et al.* (U.S. Patent No. 6,611,607). The examiner's position is that *Liu et al.* do not disclose or suggest the

use of watermark technology but *Davis et al.* teach watermark technology and that it would have been obvious to one of ordinary skill within the art to apply the teaching of *Davis et al.* to the system taught by *Liu et al.* to create the subject matter defined by appealed claims 2 and 12.

The MPEP at §2142 regarding the concept of *Prima Facie* Obviousness that the examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness.

The MPEP at §2143 states regarding the basic requirements of a *Prima Facie* case of obviousness, to “establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure.” *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

B. The references

Liu et al. (U.S. Patent No. 6,839,680) has been discussed in the appeal to the rejection under 37 CFR §102, *supra*, and the Board is referred to that detailed discussion. Briefly stated, *Liu et al.* tracks user activity across multiple domains and develops a model that describes visitors interests over time. The model can be used to market information and products to the user (see col. 2, lines 15-26). *Liu et al.* teach to identify each visitor to a web site with unique identification allowing visitor to be consistently identified during visits to multiple web sites (see col. 2, lines 34-44). *Liu et al.* further teach the aggregation of the activities of visitors according to particular business needs (see col. 4, lines 42-48). *Liu et al.* teach that visitor profile information can be shared through a centralized service wherein members of the service share profile information (see col. 6, lines 11-23).

Liu et al. teach a hub 204 as shown in Figure 7e that includes a profile database 720, an aggregator queue 722, a profiler 726 and an aggregation system 724. The hub 204

maintains a database 720 of web profiles (see col. 18, lines 50-55). The system of *Liu et al.* tracks web activities from web clients and exchanges web user profile information (see col. 21, lines 16-18). *Liu et al.* teach that owners of a web site can have the system of *Liu et al.* form an aggregated profile and enabling the aggregated profile information to be made available on a web server (see col. 30, lines 39-43 and col. 40, lines 44-60). It should be noted that the aggregation of user profiles within a database taught by *Liu et al.* do not disclose or suggest the aggregated profile being made available to the aggregator for use as a segment profile.

Davis et al. (U.S. Patent No. 6,611,607) teach integrating watermarks in multimedia content (see Title). The teaching of *Davis et al.* relates to decoding auxiliary data and watermarks and using the watermarks to control processing (see Abstract). *Davis et al.* at col. 2, lines 32-38 states that the watermark can be used to decode metadata or to locate the metadata. It should be noted that there is no disclosure or suggestion that that metadata related to the content is embedded into the content by a watermark. *Davis et al.* at col. 2, lines 45-51 states that the watermark can be used to carry a key to decrypt, decompress, descramble, or locate metadata. There is no disclosure or suggestion that metadata related to the content is embedded into the content by a watermark.

Davis et al. neither disclose nor suggest metadata related to the content is embedded by means of a watermark. *Davis et al.* at col. 5, lines 42-46 states that the watermark can be used to specify a clip to play and when to initiate playback of parts of the clip; but makes no disclosure or suggestion that metadata related to content is embedded into the content by a watermark. *Davis et al.* at col. 6, lines 30-32 states that in a copy protection application, embedded messages may convey information specifying how an application can use the content; but make no disclosure or suggestion that metadata related to the content is embedded into the content by a watermark

C. The differences between the invention and the references

Appealed claim 2

The examiner's alleges that *Davis et al.* teach the subject matter defined by appealed claim 2 including the arrangement wherein metadata related to the content is embedded by means of a watermark. The appellant disagrees with these allegations contained in the

rejection. *Davis et al.* neither disclose nor suggest the subject matter defined by appealed claim 2. Appealed claim 2 defines subject matter for metadata related to the content being embedded into the content by means of a watermark. *Davis et al.* at col. 2, lines 32-38 states that the watermark can be used to decode metadata or to locate the metadata. *Davis et al.* do disclose or suggest that metadata related to the content is embedded into the content by a watermark as defined by appealed claim 2. *Davis et al.* at col. 2, lines 45-51 states that the watermark can be used to carry a key to decrypt, decompress, descramble, or locate metadata. *Davis et al.* do disclose or suggest that metadata related to the content is embedded into the content by a watermark as defined by appealed claim 2. To satisfy an obviousness rejection, all the elements must be found in the cited references, therefore, the content must be used as stated in appealed claim 2. The appellant asserts that the subject matter defined by appealed claim 2 is not disclosed or suggested by *Davis et al.*

Appealed claim 12

The examiner alleges that *Davis et al.* teach the subject matter defined by appealed claim 12 wherein metadata related to the content is embedded by means of a watermark. The appellant, respectfully, disagrees with these allegations. *Davis et al.* neither disclose nor suggest the subject matter defined by appealed claim 12. Appealed claim 12 defines subject matter for metadata related to the content being embedded into the content by means of a watermark. *Davis et al.* at col. 2, lines 32-38 states that the watermark can be used to decode metadata or to locate the metadata. *Davis et al.* neither disclose nor suggest that metadata related to the content is embedded into the content by a watermark as defined by appealed claim 12. *Davis et al.* at col. 2, lines 45-51 states that the watermark can be used to carry a key to decrypt, decompress, descramble, or locate metadata. *Davis et al.* neither disclose nor suggest that metadata related to the content is embedded into the content by a watermark as defined by appealed claim 12. *Davis et al.* at col. 5, lines 42-46 states that the watermark can be used to specify a clip to play and when to initiate playback of parts of the clip. *Davis et al.* neither disclose nor suggest that metadata related to the content is embedded into the content by a watermark as defined by appealed claim 12. *Davis et al.* at col. 6, lines 30-32 states that in a copy protection application, embedded messages may convey information specifying how an application can use the content. *Davis et al.* neither disclose nor suggest that metadata related to

the content is embedded into the content by a watermark as defined by appealed claim 12. To satisfy an obviousness rejection, the content must be used as stated in appealed claim 12.

Therefore, the appellant asserts all the subject matter defined by appealed claim 12 is not found in the combination made by the rejection. The subject matter defined by appealed claim 12 is not disclosed or suggested by *Davis et al.*

III. The rejection of appealed 4, 5, 9 and 10 under the provisions of 35 U.S.C. §103(a) as being unapertentable over *Liu et al.* in view of *Van Wie et al.*

A. The rejection under 35 U.S.C. S 103(a)

Appealed claim 4, 5, 9 and 10 are rejection under the provisions of 35 U.S.C. §103(a) as being unapertentable over *Liu et al.* (U.S. Patent No. 6,839,680) in view of *Van Wie et al.* (U.S. Patent No. 6,240,185). The examiner's position is that *Liu et al.* disclose the subject matter defined by rejected claims except for rights management for inclusion in a rights profile or a financial profile from a financial clearinghouse. The examiner's position is further that *Van Wie et al.* teach the subject matter defined by rejected claims for rights management for inclusion in a rights profile or a financial profile from a financial clearinghouse.

The MPEP at §2142 regarding the concept of *Prima Facie* Obviousness that the examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness.

The MPEP at §2143 states regarding the basic requirements of a *Prima Facie* case of obviousness, to "establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure." *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

B. The references

Liu et al. (U.S. Patent No. 6,839,680) has been discussed in the appeal to the rejection under 37 CFR §102, *supra*, and the Board is referred to that detailed discussion. Briefly stated, *Liu et al.* tracks user activity across multiple domains and develops a model that describes visitors interests over time. The model can be used to market information and products to the user (see col. 2, lines 15-26). *Liu et al.* teach to identify each visitor to a web site with unique identification allowing visitor to be consistently identified during visits to multiple web sites (see col. 2, lines 34-44). *Liu et al.* further teach the aggregation of the activities of visitors according to particular business needs (see col. 4, lines 42-48). *Liu et al.* teach that visitor profile information can be shared through a centralized service wherein members of the service share profile information (see col. 6, lines 11-23).

Liu et al. teach a hub 204 as shown in Figure 7e that includes a profile database 720, an aggregator queue 722, a profiler 726 and an aggregation system 724. The hub 204 maintains a database 720 of web profiles (see col. 18, lines 50-55). The system of *Liu et al.* tracks web activities from web clients and exchanges web user profile information (see col. 21, lines 16-18). *Liu et al.* teach that owners of a web site can have the system of *Liu et al.* form an aggregated profile and enabling the aggregated profile information to be made available on a web server (see col. 30, lines 39-43 and col. 40, lines 44-60). It should be noted that the aggregation of user profiles within a database taught by *Liu et al.* do not disclose or suggest the aggregated profile being made available to the aggregator for use as a segment profile. It should be noted that *Liu et al.* do not disclose or suggest any aggregate a rights profile that is received from a rights clearinghouse and placed into an aggregated profile.

Van Wie et al. (U.S. Patent No. 6,240,185) relates to electronic digital rights management over insecure channels (see Title). *Van Wie et al.* teach secure rights management (see col. 3, lines 41-46). The teaching of *Van Wie et al.* states that rights management may be communicated over a network with other rights management related entities (see col. 22, lines 27-36). *Van Wie et al.* It should be noted that *Van Wie et al.* do not disclose or suggest any aggregate a rights profile that is received from a rights clearinghouse and placed into an aggregated profile.

C. The differences between the invention and the references

Appealed claim 4

Appealed claim 4 defines the subject matter defined by appealed claim 3, being further arranged to additionally aggregate a rights profile (231) received from a rights clearinghouse (230) into the aggregated profile (221). The examiner states that *Liu et al.* disclose the subject matter defined by rejected claims except for rights management for inclusion in a rights profile or a financial profile from a financial clearinghouse. The examiner's position is that *Van Wie et al.* teach the subject matter defined by appealed claim 4 for rights management for inclusion in a rights profile or a financial profile from a financial clearinghouse. Appealed claim 4 defines subject matter for the profiling center being arranged to aggregate rights management for inclusion in a rights profile and to additionally aggregate a financial profile from a financial clearinghouse. These arrangements are not disclosed or suggested by the cited references *Liu et al.* or *Van Wie et al.* either alone or in combination.

Appealed claim 5

Appealed claim 5 defines the profiling center (220) as defined by appealed claim 3, being further arranged to additionally aggregate a financial profile (241) received from a financial clearinghouse (240) into the aggregated profile (221). The Examiner states that *Liu et al.* disclose the subject matter defined by rejected claims except for rights management for inclusion in a rights profile or a financial profile from a financial clearinghouse. The examiner's position is that *Van Wie et al.* teach the subject matter defined by rejected claims for rights management for inclusion in a rights profile or a financial profile from a financial clearinghouse. Appealed claim 9 defines subject matter for the profiling center being arranged to aggregate rights management for inclusion in a rights profile and to additionally aggregate a financial profile from a financial clearinghouse. These arrangements are not disclosed or suggested by the cited references. These arrangements are not disclosed or suggested by the cited references *Liu et al.* or *Van Wie et al.* either alone or in combination.

Appealed claim 9

Appealed claim 9 defines the method as defined by appealed claim 8, including additionally aggregating a rights profile (231) received from a rights clearinghouse (230) into the aggregated profile (221). The Examiner states that *Liu et al.* disclose the subject matter defined by rejected claims except for rights management for inclusion in a rights profile or a financial profile from a financial clearinghouse. The examiner's position is that *Van Wie et al.* teach the subject matter defined by rejected claims for rights management for inclusion in a rights profile or a financial profile from a financial clearinghouse. Appealed claim 9 defines subject matter for the profiling center being arranged to aggregate rights management for inclusion in a rights profile and to additionally aggregate a financial profile from a financial clearinghouse. These arrangements are not disclosed or suggested by the cited references. These arrangements are not disclosed or suggested by the cited references *Liu et al.* or *Van Wie et al.* either alone or in combination.

Appealed claim 10

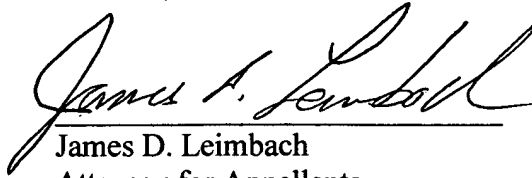
Appealed claim 10 defines the method defined by appealed claim 8 including additionally aggregating a financial profile (241) received from a financial clearinghouse (240) into the aggregated profile (221). Appealed claim 10 defines subject matter for the profiling center being arranged to aggregate rights management for inclusion in a rights profile and to additionally aggregate a financial profile from a financial clearinghouse. These arrangements are not disclosed or suggested by the cited references. These arrangements are not disclosed or suggested by the cited references *Liu et al.* or *Van Wie et al.* either alone or in combination.

Conclusion

In summary, the examiner's rejections of the claims are believed to be in error for the reasons explained above. The rejections of each of claims 1-14 should be reversed.

The Commissioner is authorized to charge fees associated with the filing of this brief to Account No. 50-3745 including any underpayments, excluding the payment of any issue fees, and to credit any overpayments to the same account.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "James D. Leimbach", written over a horizontal line.

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APPENDIX I. Evidence on Appeal

“None”

APPENDIX II. Related Proceedings

“None”

APPENDIX III. Claims on Appeal

1. An arrangement (100) for distributing content (200), comprising an aggregator (101) arranged for bundling the content (200) according to a segment profile (209) and distributing the content (200) to a receiving device (120),

the receiving device (120) comprising user profile maintenance means (210) for maintaining a user profile (211), and profile transmitting means (212) for transmitting the user profile (211) to a profiling center (220),

the profiling center (220) being arranged for aggregating user profiles (211) received from plural receiving devices (120) into an aggregated profile (221), and for making the aggregated profile (221) available to the aggregator (101) for use as the segment profile (209).

2. The arrangement (100) as claimed in claim 1, wherein metadata (201) related to the content (200) is embedded into the content (200) by means of a watermark.

3. A profiling center (220) for use in the arrangement (100) of claim 1, being arranged for aggregating user profiles (211) received from plural receiving devices (120) into an aggregated profile (221), and for making the aggregated profile (221) available to an aggregator (101) for use as a segment profile (209).

4. The profiling center (220) as claimed in claim 3, being further arranged to additionally aggregate a rights profile (231) received from a rights clearinghouse (230) into the aggregated profile (221).

5. The profiling center (220) as claimed in claim 3, being further arranged to additionally aggregate a financial profile (241) received from a financial clearinghouse (240) into the aggregated profile (221).

6. A receiving device (120) for use in the arrangement (100) of claim 1, comprising user profile maintenance means (210) for maintaining a user profile (211), and profile transmitting means (212) for transmitting the user profile (211) to a profiling center (220).

7. The receiving device (120) as claimed in claim 6, wherein the profile transmitting means (212) are arranged for transmitting only a portion of the user profile (211) which has been modified since a previous transmission of the user profile (211).
8. A method of profiling consumer behavior, comprising receiving user profiles (211) from plural receiving devices (120), aggregating said received user profiles (211) into an aggregated profile (221), and making the aggregated profile (221) available to an aggregator (101) for use as a segment profile (209).
9. The method as claimed in claim 8, comprising additionally aggregating a rights profile (231) received from a rights clearinghouse (230) into the aggregated profile (221).
10. The method as claimed in claim 8, comprising additionally aggregating a financial profile (241) received from a financial clearinghouse (240) into the aggregated profile (221).
11. The method of Claim 8 wherein the making the aggregated file available further comprises distributing content bundled according to the segment profile.
12. The method of Claim 11 wherein metadata related to the content is embedded into the content by means of a watermark.
13. The method of Claim 8 wherein receiving further comprises maintaining user profiles and transmitting user profiles to a profiling center.
14. The method of Claim 13 wherein making the aggregated profile available further comprises arranging the profiling center for aggregating user profiles received from plural receiving devices into the aggregated profile.